



California State Board of Education Policy

POLICY #
04-##
DATE
DRAFT September 2004

WAIVER GUIDELINES

Independent Study through Nonclassroom-Based, Online Distance Learning in Charter Schools

REFERENCES: Authority:
Education Code (EC) Section 33050 et. seq. (General Waiver Authority)

HISTORICAL NOTES:

Statutory Provision/Regulation Involved

(See Attachment A)

Background

An increasing number of charter schools are providing independent study through nonclassroom-based, online distance learning. This configuration of instruction establishes a circumstance that may provide the basis for waivers of certain provisions of statute and regulation.

Title 5 of the California *Code of Regulations* (5-CCR) Section 11963.4(b) establishes various minimum percentages of charter school expenditures for certificated employees and for instructional costs as the basis for the Advisory Commission on Charter Schools (ACCS) to recommend to the State Board of Education (SBE) determinations of funding for nonclassroom-based charter schools at the 70 percent, 85 percent, 100 percent, or zero percent levels in 2003-04 and thereafter. However, with respect to each such percentage level, the regulation specifically allows for adjustment of the recommendation if there is a “reasonable basis” to do so.

5-CCR Section 11963.4(e) defines a “reasonable basis” for adjusting a recommended percentage level. The definition includes, but is not limited to, such mitigating circumstances as documented data regarding individual school circumstances (e.g., various types of one-time expenses); the size of the charter school; and how many years the charter school has been in operation.

Waiver Guidelines/Conditions and Required Documentation

Since the existing regulations already provide for the ACCS to depart from the specific criteria for recommending particular determination of funding levels, there is no need for waivers of the specific criteria relating to determination of funding recommendations. However, there are *Education Codes* (EC) and specific Title 5 Regulations that will need to be waived under the SBE general waiver authority of EC 33050 (See Attachment A).

Instead, the SBE hereby makes a statement of intent to the ACCS that a substantive and credible effort by a charter school to provide independent study through

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nonclassroom-based, online distance learning may constitute a reasonable basis to depart from the specific criteria for recommending a specific determination of funding level in accordance with 5-CCR Section 11963.4(b) and (e).

A “substantive and credible effort” may be established initially and/or demonstrated over time by an Academic Performance Index (API) ranking and/or similar schools ranking for each school with the API growth target having been met overall and for each applicable subgroup in the most recent API release, and by meeting Adequate Yearly Progress (AYP) growth targets. No certificated expenditure or pupil teacher ratio limit will be prescribed by waiver for charter schools having an 800 (8, 9, or 10) API ranking. API rankings of: 750 (6) may be considered for waivers at a 30:1 pupil teacher ratio; 775 (7) may be considered for a 35:1 pupil teacher ratio waiver.

Background on Certificated Expenditure Requirements and Pupil-to-Teacher Ratio

Certificated Expenditure Requirement

5-CCR Section 11963.4(b)(3) states that at least 50 percent of expenditures be devoted to certificated employees in order to justify a recommended determination of funding at the 100 percent level. The SBE would consider a lower percent of expenditures being devoted to certificated employees to be reasonable if a charter school’s independent study through nonclassroom-based, online distance learning is determined to be a substantive and credible effort.

Pupil-to-Teacher Ratio

A combination of statutory and regulatory provisions requires that the ratio of pupils to teachers in independent study in a charter school be no greater than the ratio of pupils to teachers in the educational programs operated by the largest unified school district, as measured by average daily attendance, in the county or counties in which the charter school operates. *Several Title 5 Regulations and Education Codes set this same standard (See Attachment A).*

The SBE recognizes that providing independent study through nonclassroom-based, online distance learning may present a reasonable foundation for a waiver of portions of the certificated expenditure and the pupil-to-teacher ratio requirement. However, this area requires further study. As a result, this waiver policy proposes a one-year research-based waiver, during which time evidence of student achievement from pupils engaged in a virtual learning environment can be analyzed to validate that the use of educational technology used in nonclassroom-based, online distance learning is such that a single teacher is able to provide quality instruction to a larger group of students as reflected in student performance overall or in comparison to similar schools. The SBE finds that reasonable guidelines for waivers of this combination of statutory and regulatory provisions are:

- The affected charter school provides independent study through nonclassroom-based, online distance learning that is determined to



be a substantive and credible effort per above.

- Certificated expenditure reductions are reflected and documented in increased instructional expenditures of at least 85 percent overall.
- Computer-based instruction and assessment must be provided that includes the use of a learning management program, computer generated, standards-based guided lessons, lesson plans, level of testing and periodic assessment of student achievement, and measurements of student progress over a period of time.
- Teachers are provided with technology tools and print media, which include but are not limited to, standards-aligned textbooks and supplies, computer, printer, monitor, Internet service, telephone, staff development that provides for the monitoring of student progress, and a means of electronic communication for frequent student contact.
- All students are provided a computer-generated individualized learning plan that is generated based on initial testing and can be monitored remotely by the teacher to evaluate student progress.
- All students are provided a computer, Internet service, printer, monitor, and all standards-aligned materials required for each subject studied, meeting California State Content Standards for each grade level.
- The charter school is a non-profit entity. If the charter school is a for profit entity, it is the intent of the SBE that profit-making charter schools adhere to all the requirements of statute and regulation pertaining to independent study and SB 740 regulations, including transparency in the use of all educational funding received from grants, fundraising, average daily attendance, etc.

It is the intent of the SBE that any such waiver request pertaining to SB 740 and independent study statute and regulation is reviewed first by the ACCS, and that the ACCS provide the SBE with a recommendation to approve, approve with conditions, or deny the waiver request. The ACCS should also provide a recommendation on the percentages of charter school expenditures for certificated employees and for instructional costs as a part of that recommendation.

Non-Waivable Provisions

The SBE recognizes that certain provisions of statute pertaining to independent study are not waivable (See *Education Code* Section 51747.3 (d)). Specifically, a charter school providing independent study through nonclassroom-based, online distance learning (like any other charter school providing instruction through independent study) must:

- Not give to any of its pupils (or their parents or guardians) any funds or other thing of value that a school district could not legally provide to a similarly situated pupil of the school district (or to the pupil’s parent or guardian).
Education Code 51747.3(a)



- Claim as average daily attendance only pupils who reside in the county in which the charter school is located or an immediately adjacent county.
Education Code 51747.3(b)

Summary

In keeping with the requirements of *Education Code* Section 33050-33054, the SBE will consider all waiver requests for the *Education Code* and Title 5 Regulations on Attachment A submitted by charter schools.

It is the intent of the SBE that each waiver request submitted by a charter school regarding SB 740 funding determinations first is reviewed by the ACCS, and that the ACCS provide the SBE with a recommendation to approve, approve with conditions, or deny the waiver request, along with a recommendation on the percentages of charter school expenditures for certificated employees for that specific charter school.



Attachment A

Statutory Provisions/Regulations Involved

Strike all

E.C. 47612.5 (b) Notwithstanding any other provision of law and except to the extent inconsistent with this section and Section 47634.2, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted hereunder. The State Board of Education shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

Strike all

5CCR 11704 In a charter school, for the purposes of Education Code section 51745.6, the ratio of average daily attendance for independent study pupils 18 years of age or less to full-time certificated employees responsible for independent study shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the largest unified school district, as measured by average daily attendance, in the county or counties in which the charter school operates. Units of average daily attendance for independent study that are ineligible for apportionment as provided in subdivision (b) of Education Code section 51745.6 shall also be ineligible for funding pursuant to Chapter 6 (commencing with section 47630) of Part 26.8 of the Education Code.

Strike all

5CCR 11963.3(b)(2) The charter school's pupil-teacher ratio as calculated pursuant to Education Code section 51745.6; and the pupil-teacher ratio of the largest unified school district in the county or counties in which the charter school operates, as required by Section 11704.

Strike part

5CCR 11963.4(b)(3)

~~"If the percentage calculated pursuant to ... and the charter schools pupil to teacher ratio is equal to or less than the pupil teacher ratio of the largest unified school district in the county or counties in which the charter school operates as reported pursuant to paragraph(2) of subdivision (b) of Section 11963.3, the Advisory Committee on Charter Schools shall recommend..."~~